S.B.CIVIL WRIT PETITION NO.642/1994

MANGTU RAM VS. STATE OF RAJASTHAN & ORS.

DATE OF ORDER : 16/10/2006

HON'BLE SHRI RAJESH BALIA, J.

Mr.S.N.Trivedi, for the petitioner.

Heard learned counsel for the petitioner. None has appeared for respondents in spite of service.

The petitioner was appointed as Jhaduwala in the Municipal Council, Jodhpur on 18/6/1965. The promotion to the post of Jamadar is 100% by way of seniority amongst the class IV employees of the Municipal Council. The petitioner having not been promoted had raised industrial dispute through Trade Union working at the Municipal Council. The claim of the petitioner was that persons junior to him have been promoted on the post of Jamadar while he was not so promoted and he has mentioned that one Rohit Dass, who is junior to him has been promoted as Jamadar.

Before the Labour Court, the Municipal Council accepted the date of appointment of Mangtu Ram -petitioner and also the fact that appointment to the post of Jamadar is 100% by way of seniority from amongst the Jhaduwala but denied that any person junior to

petitioner has been promoted. It was stated that until 1960, 408 employees were there and because of the limited availability of posts, the question of promotion to the persons appointed after 1960 could not arise.

The labour Court vide its order dated 22/7/1989 directed the Municipal Council, Jodhpur to examine the issue and if it is found that any person junior to petitioner has been promoted as Jamadar then the petitioner may also be promoted w.e.f. the date person junior to him is so promoted.

The award has not been challenged by any one. The petitioner having not got any relief filed this writ petition alleging that as per the seniority list published, which is Annex.1, at least three persons namely; Rohit Dass appointed on 28/1/1966, Gopal Singh appointed on 28/10/1966 and Prem Dass appointed on 3/10/1966 have been promoted as Jamadar w.e.f. 28/1/1966, 10/1/1978 and 3/6/1978 respectively. With these allegations, he has claimed relief in terms of award, which the respondents have not accepted.

In spite of service, no one has appeared and no reply to the writ petition has been filed until now. In view of the aforesaid, the averments made by the petitioner, which remained unrebutted, have to

be accepted and in terms of the award passed by the Labour Court the petitioner is entitled to be promoted w.e.f. the date person junior to him has been so promoted as Jamadar that is to say w.e.f. 28/1/1966 when Rohit Dass has been promoted. Since the petitioner has in fact not discharged the duties of Jamadar, therefore, he is not entitled to any arrears of salary but his fixation may be made and emoluments of the promotion post shall be paid w.e.f the date of filing of this writ petition. Since the petitioner has retired from service during the pendency of writ petition, his retiral benefits shall be as per the fixation to be made as per this order. No order as to costs.

(RAJESH BALIA), J.

Pankaj Baweja